Supreme Court of the United States.

No. 230.—October Term, 1905.

Antonio Ortega, Plaintiff in Error, *vs.* Angela Lara. } In error to the District Court of the United States for the District of Porto Rico.

[May 21, 1906.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

Angela Lara brought her action against Antonio Ortega in the District Court of the United States for the District of Porto Rico to recover damages alleged to have been suffered by her by reason of his breach of promise of marriage. The date of the promise was laid as June 1, 1900, and of the breach in 1904. Both parties were subjects of Spain and residents of Porto Rico.

Defendant demurred to the complaint, and the demurrer having been overruled, pleaded the general issue. The cause was tried by a jury and resulted in a verdict for plaintiff in the sum of $5,000, interest and costs, on which judgment was entered. Defendant moved in arrest and for judgment *non obstante veredicto*, which motions were overruled, and this writ of error was thereupon allowed.

At the conclusion of the evidence defendant requested the court to instruct the jury to find in his favor, on the grounds, among others, that the court had no jurisdiction of a suit where both plaintiff and defendant were subjects of the King of Spain, and because the cause of action arose in June, 1900, "at which time there was no provision in the laws in force in Porto Rico for a suit of the character set out in plaintiff's declaration, the only basis for the said suit being the provisions of article 44 of the Civil Code then in force." Similar reasons were assigned in support of the motions in arrest and *non obstante*.

1. The judgment was for $5,000 and costs. It carried interest, but it is the amount of the judgment that furnishes the test of our jurisdiction, and it is conceded that that is insufficient in this instance. But plaintiff in error contends that the refusal of the court below to limit the right of recovery by the terms of article 44 of the former Civil Code of Porto Rico amounted to the denial of a right claimed under a statute of the United States, and that jurisdiction may be maintained on that ground. Act March 3, 1885, 23 Stat. 443, c. 355, §§ 1 and 2; Act April 12, 1900, 31 Stat. 77, c. 191, § 35.

The treaty ceding Porto Rico to the United States was ratified by the Senate, February 6, 1899; Congress passed an act to carry out its obligations March 3, 1899; and the ratifications were exchanged and the treaty proclaimed April 11, 1899. Then followed the act of April 12, 1900, 31 Stat. 77, c. 191. At that date article 44 of the Civil Code of Porto Rico, relating to breaches of promise of marriage, was in force, and provided that under certain conditions "the person who refuses to marry without just cause, shall be obliged to indemnify the other party for the expenses which he or she may have incurred by reason of the promised marriage."

By the general rule of public law, recognized by the United States, whenever political jurisdiction and legislative power over territory are transferred from one nation to another, the laws of the country transferred, intended for the protection of private rights, continue in force until abrogated or changed by the new government. Of course, in case of cession to the United States, laws of the ceded country inconsistent with the Constitution and laws of the United States so far as applicable would cease to be of obligatory force; but otherwise the municipal laws of the acquired country continue.

Nevertheless, and apparently largely out of abundant caution, the eighth section of the act of April 12, 1900, provided: "That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by act of Congress of the United States; . . ."

In 1902 the legislature of Porto Rico enacted a new Civil Code, which went into effect July 1 of that year, and this repealed article 44 of the prior Civil Code, and carried forward several articles bearing upon the same subject.

It will be remembered that the alleged promise was in 1900 and the alleged breach in 1904. And now the argument is, that by reason of section 8 of the act of April 12, 1900, commonly called the "Foraker Act," article 44 became a law of the United States by adoption, and that, therefore, the ruling of the court below that recovery was not limited to expenses was equivalent to the denial of a right claimed under a law of the United States.

We do not agree with this view. Article 44 was a law of Porto Rico on April 12, 1900, and the operation of the Foraker act was to define how it might be amended or repealed.

It was repealed by the Porto Rican legislature before the alleged breach of promise. If the District Court erred in declining on any ground to

apply it as a limitation, the error cannot be corrected on this appeal, because the appeal does not lie.

The alleged Federal question had no existence in substance. The laws of Porto Rico remained the laws of Porto Rico except as indicated in section 8 of the Foraker act, which section did not make all the laws of Porto Rico acts of Congress.

We cannot perceive that "the Constitution of the United States, or a treaty thereof, or an act of Congress" was brought in question or a right claimed thereunder denied, within section 35 of the Foraker act, or that "the validity of a treaty or statute of or an authority exercised under the United States" was drawn in question within section 2 of the act of March 3, 1885.

2. By section 3 of the Act of March 2, 1901, 31 Stat. 953, c. 812, it was provided "that the jurisdiction of the District Court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States."

The jurisdiction of the District Court, when the parties on both sides were the subjects of the King of Spain, has several times been sustained by this court, and we do not feel required in this case to make any other ruling.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.